IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 25057 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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TULSI RICE & PLUS MILLS THR' ITS PARTNER JORUBHA - Petitioner(s)
Versus
DY.COLLECTOR & 2 - Respondent(s)

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Appearance :

MR DJ BHATT for Petitioner(s) : 1,
GOVERNMENT PLEADER for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE MD SHAH

Date : 22/11/2007

ORAL JUDGMENT

1.0 By way of this petition, the petitioner has prayed to quash and set aside the order

passed by the Deputy Collector-respondent No.1, herein, dated 10.09.2001 as well as the order passed by the Stamp Duty Control Revenue Officer-respondent No.2, herein, dated 21.06.2005.

2.0 The brief facts of the case are that the petitioner is a partnership firm engaged in the business of rice and pulse. The land upon which the mill of the petitioner-firm is in existence, has been take on lease by the petitioner-firm from G.I.D.C., Cambay for a period of 99 years. Since one of the partners of the petitioner-firm was leaving the firm, a fresh deed, releasing the outgoing partner and showing the change in the profit and loss share of the remaining partners was registered. The outgoing partner was paid an amount of Rs.30,000/- towards consideration.

3.0 In pursuance of the above, a show cause notice for the payment of deficit stamp duty totaling to an amount of Rs.2,51,300/- along with fine of Rs.250/- came to be issued by respondent

No.1 to the petitioner-firm considering the amount paid to the outgoing partner by the petitioner-firm as consideration. Thereafter, respondent No.1 passed the impugned order which was challenged by the petitioner-firm before the appellate Authority. However, the appellate Authority confirmed the order passed by respondent No.1. Hence, the present petition.

4.0 Mr. Bhatt, learned Advocate for the petitioner-Firm has submitted that the respondent-Authorities have committed an error by not taking into consideration the fact that, since the land being Survey No.251 and 252 situated in G.I.D.C., Cambay have been taken on lease by the petitioner-Firm, the demand of stamp duty for the entire property as if it is a sale transaction, is misconceived.

4.1 Learned Advocate has further submitted that the the respondent-Authorities ought to have held that the payment made to outgoing partner

was only qua portion of the interest of the said partner in the property in question and was not made for the entire property.

4.2 Learned Advocate has submitted that neither any material supplied nor any reasons are assigned for the valuation done by the respondent No.1 and that the orders have been passed in a cyclostyled form by filling up blanks.

4.3 In support of his case learned Advocate has placed reliance on a full bench decision of this Court in the case of ***"Vrajlal Makandas Valiya Vs. L.D. Joshi, Collector, Dist. Bhavnagar"*** reported in 1971 GLR 586 wherein, at Para-2 it has been observed as under,

> "**2**. The interest of a party in the partnership is not an interest in a specific item of the partnership property, but, it is a right to obtain his share of profits from time to time during the subsistence of the partnership and on dissolution of the partnership or his retirement from the partnership, to get

> the value of his share in the net partnership assets which remain after satisfying the liabilities set out in Clause (a) and sub-clauses(i), (ii) and (iii) of Clause (b) of Sec.48. When, therefore, a partner retires from the partnership and the amount of his share in the net partnership assets after deducting liabilities and prior charges is determined on taking accounts on the footing of a notional sale of the partnership assets and given to him, what **he receives is his share in the partnership and not any price for sale of his interest in the partnership. There is in this transaction no element of sale; the retiring partner does not sell his interest in the partnership to the continuing partners. He on the contrary carves out his interest and takes it away by evaluating it.”**

4.4 Learned Advocate has also placed reliance on another full bench decision of this Court in the case of ***“Chief Controller Revenue Authority Vs. Chaturbhuj @ Bachubhai Tribhovandas Thakkar & Anr.”*** reported in 1976 GLR 898 wherein the similar principle has been followed.

5.0 Heard learned Counsel for the parties and perused the documents placed on record. From the record it transpires that the show-cause notice as well as order passed by respondent No.1 are in

printed forms and that the same are issued by filling blanks. Apart from that, respondent No.1 has not supplied any material to the petitioner-Firm on the basis of which the valuation of the property has been determined. In that view of the matter here it would be relevant to refer to decision of this Court in the case of ***"B.M. Bharwad Vs. State"*** reported in 2005(2) GLR 1792 wherein it has been observed that it is the statutory duty of the Officer to convey in the notice the material on which the valuation of the property has been determined.

5.1 In the case on hand, the respondent No.1 has not supplied any material to the petitioner-Firm on the basis of which the valuation of the property of the petitioner-Firm was determined and on the basis of which respondent No.1 came to the conclusion that the stamp duty paid by the petitioner-Firm is less. Apart from that on perusal of the impugned orders it transpires that the contentions raised by the petitioner-Firm

were not dealt with by the respondent Authorities and no reasons were assigned for passing the impugned orders by them. Besides that respondent No.2 has mentioned in its order that the document pertains to the partition of the property among the brothers which is absolutely wrong.

5.2 The aforesaid fact shows that the respondent No.1 has passed the impugned order without applying his mind which was in turn mechanically confirmed by respondent No.2. Admittedly, there have been neither any material supplied nor any reasons assigned by respondent Nos. 1 and 2 for passing the impugned orders.

5.3 The respondent Nos.1 and 2 are quasi-judicial Authorities, and hence, being quasi-judicial authorities, they are required to supply the relevant material on the basis of which the valuation of the property of the petitioner-Firm was determined. Apart from that, they are also required to deal with the contentions raised by

the parties concerned and to consider various provisions of the Act and the law laid down by this Court. I am, therefore, of the opinion that the ends of justice would be met if the matter is remanded to the respondent No.1 for its consideration afresh.

6.0 In the result, the petition is allowed. The impugned orders passed by the Deputy Collector dated 10.09.2001 as well as the order passed by the Stamp Duty Control Revenue Officerdated 21.06.2005 are quashed and set aside. The matter is remanded to the respondent No.1-Authority for its consideration afresh. The respondent No.1-Authority, after hearing the petitioners and after considering all the contentions raised before it, shall pass a reasoned order without being influenced by the order passed by this Court. Rule is made absolute. No order as to costs.

(M.D. Shah,J.)

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